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LAW ENFORCEMENT. USE OF EXCESSIVE FORCE. DISCRIMINATION. INITIATIVE STATUTE.

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December 7, 2015

RECEIVED

DEC 29 2015

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

**IN RE: STATUTORY STATE-WIDE BALLOT INITIATIVE
THE OVER-POLICED RIGHTS ACT**

Office of the Attorney General

ATTN: ASHLEY JOHANSSON, INITIATIVE COORDINATOR

P.O. Box 944255

Sacramento, California 94244-2550

Dear Ms. Johansson:

Please find enclosed text for a proposed state-wide ballot initiative entitled the Over-Policed Rights Act. Also, please find enclosed the filing fee of \$200.00. By separate cover, you will receive Certificates pursuant to Elections Code §§ 9001(b) and 9608 from California-resident members of our group, as well as from other California-based organizations, including the Reverend Jeff Moore, President of the San Jose/Silicon Valley NAACP.

Pursuant to Elections Code section 9001(a), our California-resident members request that the Attorney General prepare a circulating title and summary of the chief purpose and points of the initiative measure entitled the Over-Policed Rights Act.

If you have any questions or comments, please do not hesitate to give me a call. You can reach the Reverend Moore and I at the following:

Reverend Jeff Moore,
President San Jose/Silicon Valley NAACP
304 North 6th Street
San Jose, California 95112
(408) 295-3394
info@sanjosenaacp.org
moorej@esuhd.org

Support the Dream Defenders
C/O Greg German
306 21st Avenue South, #5D
Myrtle Beach, South Carolina 29577
(843) 283-1892
thetortmaster@yahoo.com

Sincerely,



Greg German

encls.

CC: Reverend Jeff Moore,
President San Jose/Silicon Valley NAACP
304 North 6th Street
San Jose, California 95112

Office of the Attorney General
ATTN: Ms. Ashley Johansson, Initiative Coordinator
P.O. Box 944255
Sacramento, California 94244-2550

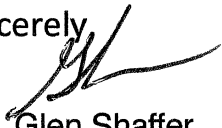
Dear Ms. Johansson,

Please find enclosed my certification as a proponent of the Statewide ballot initiative called the California Over-Policed Rights Act, which would provide persons in California with the right to file suit against police jurisdictions that have acted discriminatorily or with too much force.

The ballot initiative also provides for further reporting requirements from police jurisdictions regarding stops, use of force, etc. Finally, it provides for repercussions and a probationary period if a police jurisdiction is not in compliance.

By separate cover, you will receive a copy of the proposed initiative along with the filing fee. If you have any questions or comments for me, please do not hesitate to contact me.

Sincerely,



Glen Shaffer
15045 Stratford Drive
San Jose, CA 95124
(408) 482-8990
askglenbo@att.net

Office of the Attorney General
ATTN: Ms. Ashley Johansson, Initiative Coordinator
P.O. Box 944255
Sacramento, California 94244-2550

Dear Ms. Johansson,

Please find enclosed my certification as a proponent of the Statewide ballot initiative called the California Over-Policed Rights Act, which would provide persons in California with the right to file suit against police jurisdictions that have acted discriminatorily or with too much force.

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By separate cover, you will receive a copy of the proposed initiative along with the filing fee. If you have any questions or comments for me, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Lisa Freedman Shaffer".

Lisa Freedman Shaffer
15045 Stratford Drive
San Jose, CA 95124
lisadfs@att.net

A BALLOT INITIATIVE

Adding to the California Government Code to provide for a private cause of action against Law Enforcement Agencies that discriminate or have shown a pattern of using excessive force.

BE IT ENACTED as a Statute via Ballot Initiative by the People of the State of California:

SECTION 77800. This act shall be known and may be cited as the "Over-Policed Rights Act."

SECTION 77801. Definitions:

In this Act:

- (1) *Law enforcement agency* -- The term "law enforcement agency" means any State, local, or private agency, acting on behalf of a unit of state or local Government, engaged in the prevention, detection, or investigation of violations of criminal laws, punishable by fine or imprisonment.
- (2) *Law enforcement agent* -- The term "law enforcement agent" means any State, local, or private agency official, acting on behalf of a unit of state or local Government, responsible for enforcing criminal laws, punishable by fine or imprisonment, including police officers and other agents of a law enforcement agency, and also including any private contract employees with those duties.
- (3) *Covered program* -- The term "covered program" means any program or activity funded in whole or in part with funds made available from the State for any law enforcement or other purpose.
- (4) *Unit of local government* -- The term "unit of local government" means --
 - (a) any city, county, township, town, borough, parish, village, or other general purpose political subdivision of the State;
 - (b) any law enforcement district or judicial enforcement district that --
 - (i) is established under applicable State law; and
 - (ii) has the authority to, in a manner independent of other State entities, establish a budget and impose taxes.

(5) *Weapon or other weapon* -- "Weapon" or "other weapon" shall include any weapon used to subdue or inflict damage to a person, provided that handcuffs, shackles or hand ties, when used as provided for by law enforcement training guidelines, shall not be considered to be a weapon.

SECTION 77801. PRIVATE CAUSE OF ACTION AGAINST STATE, LOCAL, AND CONTRACTED LAW ENFORCEMENT AGENCIES

(1) A natural person of the United States and resident of California shall have the right to file an action in state court seeking a declaration that the law enforcement agency in the jurisdiction in which the complainant resides is an over-policed jurisdiction as that term is defined in subsection 2 herein. Venue shall lie in the county of the complaining party's residence, provided, however, a complainant may elect venue in an adjacent county.

(2) As used in this section, an over-policed jurisdiction is one that has shown a long-standing pattern of abuse, brutality, or racial, or identity, or language minority animus or discrimination of at least twelve month's duration. Any party who brings an action pursuant to this Section may show a long-standing pattern of abuse, brutality or racial or language minority animus or discrimination using the information provided pursuant to Section 12525.5 of the California Government Code or Sections 13010 or 13012 of the Penal Code or any other reliable statistics which demonstrate that the law enforcement agency has violated the Equal Protection rights of those in their jurisdiction by arresting, stopping, harming, detaining, issuing citations against, failing to hire, property seizures of, killing, or assaulting members of a racial, identity, ethnic, or minority language group in a statistically significant greater percentage than that group is represented in that jurisdiction's population. A party who brings an action pursuant to this Section may make this showing without proof of willful action by the policing jurisdiction.

(3) **COURT PROCEDURES; STANDING AND WAIVER OF FEES.** By virtue of a person's residence in a jurisdiction and status as a member of the allegedly aggrieved racial, identity, ethnic, or language minority class, he or she is deemed to have standing to sue. Every person in a jurisdiction is affected in one way or another by the policing carried out there.

(a) Filing fees and any trial or witness fees for this action are waived.

(b) Complainant will be responsible for any fees necessary to effectuate Service of Process on the policing jurisdiction. The Complaint and all subsequent pleadings will be prepared and argued by an attorney in good standing in that court and follow current state rules of civil procedure except as described herein or amended for good cause by the court.

(4) **JURISDICTION; EXHAUSTION OF ADMINISTRATIVE OR OTHER REMEDIES.** The Superior Courts of the State of California shall have jurisdiction of proceedings instituted pursuant to this Act and shall exercise the same without regard to whether a person asserting rights under the provisions herein shall have exhausted any administrative or other remedies that may be provided by law. Trial will proceed before the judge without a jury.

(5) **SPEEDY TRIAL PROVISION.** A hearing and disposition of this matter shall occur within six months after the law enforcement agency has filed its Answer. The parties shall provide expedited discovery. No later than one month after the law enforcement agency has filed its Answer, the court shall convene the parties to discuss discovery and case management. The inherent contempt powers of the court shall continue. A law enforcement agency may file a Motion to Dismiss if the complainant is not a resident of the county. All other jurisdictional matters will be raised at the final hearing herein.

(6) **CONSOLIDATION OF CASES.** The court may consolidate multiple independent complaints for hearing. One continuance of no more than one month's duration may be granted by the court for good cause shown.

(7) **REFUSAL TO COMPLY WITH REPORTING REQUIREMENTS; REBUTTABLE PRESUMPTION.** If the law enforcement agency has refused, or substantially failed, to comply with the reporting requirements in Section 12525.5 of the Government Code or Sections 13010 and 13012 of the Penal Code, then there shall be a rebuttable presumption that the law enforcement agency is an over-policed jurisdiction. The presumption may be rebutted if the law enforcement agency fully complies with the requirements described in those Sections. The complaint brought by virtue of this Section may proceed even if compliance is satisfied.

(8) At the election of the Attorney General, the State may enter the suit on behalf of the Complainant; however, if the Complainant voices an objection, he or she will be allowed to proceed with the State appearing as a friend of the court, or the State may withdraw, if it elects to do so, but may re-enter the matter at any time thereafter. During the proceedings and after adjudication, the Attorney General may appoint a local or state government authority or official as its designee to appear at hearings and receive reports and take all actions available to the Attorney General and State under this Act. .

(9) If the court, after hearing, finds by a preponderance of the evidence that the law enforcement agency has had a long-standing pattern of abuse, brutality, or racial or language minority animus or discrimination, which may be proved statistically and without direct evidence of intentional malice, then the court shall designate that law enforcement agency as an Over-Policed Rights Act jurisdiction. The law enforcement agency may appeal, but there shall be no stay of this Act pending appeal. The complainant shall also have the right to appeal.

**SECTION 77802. CONDITIONS PLACE ON OVER-POLICED JURISDICTIONS AND
ENFORCEMENT AND PENALTIES**

(1) **PENALTIES, CONDITIONS AND PROBATION.** This Act is not intended to limit the authority of a court judge to tailor his or her order to a given situation. However, a designation as an Over-Policed Rights Act jurisdiction shall, at a minimum, result in the following, unless good cause is shown:

(a) The court shall appoint volunteer observers of good moral character who reside in the jurisdiction to monitor the law enforcement agency as described herein.

(b) The specific reporting requirements for an Over-Policed Rights Act jurisdiction, as described below, shall be enforced.

(c) The Over-Policed Rights Act jurisdiction shall forfeit all federal "militarized" hardware, including only vehicles and weapons, to the State, and if it is receiving funds as a Covered Program from the State, those may be terminated at the discretion of the Attorney General.

(d) The Over-Policed Rights Act jurisdiction shall be subject to audits at any time by the Office of the Attorney General or its designee.

(e) The Over-Policed Rights jurisdiction shall designate a person to act as liaison between the law enforcement agency and the court system, the Attorney General or its designee and any volunteer observer organizations.

(f) If the court finds a long-standing pattern of abuse, brutality, or racial or language minority animus regarding the law enforcement agency's temporary detention of arrestees, then the court will order all law enforcement personnel in the holding facility to wear body cameras and shall consider ordering (i) twenty-four hour video monitoring in cell areas, (ii) the employment of additional law enforcement agents, including those trained in first aid, (iii) specific changes to detention protocols, (iv) the employment of Spanish-speaking (or other language of need) officers, (v) physical changes or additions to the facilities, and (vi) the use of volunteer observers in or around the cell area.

(g) The court shall order the use of functioning body cameras for all law enforcement agents on patrol and their supervisors. .

(h) The court shall order that any law enforcement agent in the law enforcement agency involved in using his or her weapon against a person shall have a blood screen to include testing for illegal substances including steroids, banned substances and alcohol as soon as possible and no later than four hours after the event.

(i) The court shall audit the public complaint system used by the law enforcement agency and mandate changes if necessary.

(j) The court shall ensure that the law enforcement agency has a Citizens' Review Board in place.

(2) Volunteer observers shall be authorized to—

(a) enter and attend at any place in which law enforcement agents of the law enforcement agency are conducting official business for the purpose of observing and documenting; provided, however, that the court may order that certain investigations involving organized crime or other matters shall not be subject to volunteer observation; and

(b) ride along in any police cruiser or other police conveyance.

(c) may carry and use video cameras or any other reasonable recording device.

(d) shall observe and report to the Attorney General or the appropriate designee, and if requested, to the court. Observers are directed to observe only, and if any problems occur, either the observer or the police unit may report same to the court.

(e) Video or other recordings, including written reports made by volunteer observers shall be maintained by the Attorney General or designee.

(3) The Attorney General shall make available training materials for use by the Volunteer Observers.

(4) **REPORTING REQUIREMENTS.** In addition to the Universal Reporting Requirements described above, an Over-Policed Rights Act jurisdiction shall also meet the following reporting requirements and provide to the Attorney General or designee within one week after any occurrence —

(a) a description of every instance in which a law enforcement agent during the performance of his or her professional duties unholsters a weapon of any kind in preparation for its use on any person;

(b) a description of any assault or battery committed by any law enforcement agent of the law enforcement agency during his or her professional duties;

(c) a list of all incidents in which a police encounter escalates. This would include, but is not limited to, any situation in which a resisting arrest charge, or that jurisdiction's equivalent, is the most serious charge filed against a person;

(d) a list of all injuries suffered by arrestees or detainees or persons released, including those observable injuries that were not caused by, or occurred during, the arrest or detainment;

(e) any lists or reports required by the court tailored to the court's findings or any reasonable requests of the Attorney General or designee. The final arbiter of reasonableness for the purposes of this Act will be the court;

(f) a list of any significant changes to law enforcement agency, department, or unit procedures or protocols;

(g) a copy of all blood screens conducted pursuant to 1(h);

(h) and a videotape (including audio) of every interrogation conducted by law enforcement agents of the law enforcement agency or by anyone at the behest of the law enforcement agency.

(5) **ENFORCEMENT AND PENALTIES.** An officer of an Over-Policed Rights Act jurisdiction who fails to report an action as described in 4(a)-(d) commits a felony. An Over-Policed Rights Act jurisdiction that fails to report as provided for in Section 4(e)-(h) is subject to contempt and the contempt powers of the court. The Attorney General or designee may investigate any instance involving an unholstered weapon, an assault or a battery, and the Attorney General or designee shall investigate every instance in which shots were fired, a taser employed or other weapon used at a person.

SECTION 77803. PETITION FOR TERMINATION AS OVER-POLICED JURISDICTION; PROCEDURES

(1) **PETITION FOR TERMINATION.** After the expiration of one year or any longer term set by the court, the law enforcement agency may petition the court for relief from the designation as an Over-Policed Rights Act jurisdiction.

(2) If by a preponderance of the evidence the court finds that the law enforcement agency has followed the terms of its order and the strictures of this provision, has implemented any and all reasonable and narrowly-tailored recommendations made by the Office of the Attorney General, and if the court finds that the law enforcement agency has been positively changed and is now focused on proper policing techniques, then the court shall lift the OPRA designation. In the alternative, the court may designate a reasonable term of continued probation if certain requirements have yet to be met.

SECTION 77804. SAVINGS CLAUSE; LOCAL PROGRAM; EFFECTIVE DATE

(1) **SAVINGS CLAUSE.** If any provision of this Act or the application of it to any person or circumstances is held invalid, the remainder of this Act and the application of its provisions to other persons not similarly situated or to other circumstances shall not be affected thereby.

(2) **LOCAL PROGRAM.** If the Commission on State Mandates that this act contains costs mandated by the state, reimbursement to local agencies for those costs shall be made pursuant to Part 7 of Division 4 of Title 2 of the Government Code.

(3) **EFFECTIVE DATE.** This Act shall take effect on January 1 of the year after which the People of the State of California have voted for it on the ballot.

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

LAW ENFORCEMENT. USE OF EXCESSIVE FORCE. DISCRIMINATION.

INITIATIVE STATUTE. Establishes court process for designating a state or local law enforcement agency as an “over-policed jurisdiction” when the agency has shown a pattern of using excessive force or discrimination for at least twelve months. Subjects such agency to increased auditing, reporting, and drug testing requirements, monitoring by volunteer observers, loss of equipment, potential loss of State funding, mandatory use of body cameras, and other remedies ordered by court. Permits agency to petition court to remove designation after compliance with court order for at least one year. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Potential state court costs that could range in the millions of dollars annually related to hearing and processing cases filed under the measure and oversight of law enforcement agencies found to be over-policing. Potential state and local law enforcement costs that could be in the tens of millions of dollars annually primarily related to compliance with requirements placed on agencies found to be over-policing.** (15-0124.)